Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

REPLY COMMENTS OF THE ILLINOIS COMMERCE COMMISSION

I. Introduction

Pursuant to the Federal Communications Commission's ("Commission") *Notices of Proposed Rulemakings* released January 29, 2008, in the above-captioned dockets, and the Order adopted and released on March 24, 2008, extending the deadline for reply comments in this proceeding to May 19, 2008, the Illinois Commerce Commission ("ICC") does hereby submit these Reply Comments.[1] Given the extensive nature of the record, the ICC will not respond specifically to every issue raised by commentators. The ICC submits, however, these reply comments to respond to some comments of particular concerns.

II. IDENTICAL SUPPORT RULE

(A) Eliminating the Identical Support Rule Neither Impairs Competition Nor Violates the Competitive Neutrality Principle

The existing "identical support" rule provides that the amount of high cost universal support that competitive ETCs receive per line in an area is determined by the amount of per line support that the incumbent LEC serving that area receives.[2] US Cellular Corporation ("US

[1] These Consolidated Reply Comments are being filed in response to the three Notices issued on January 29, 2008, in the above-captioned dockets, identified as FCC 08-4 (Identical Support Rule NPRM), FCC 08-5 (Reverse Auctions NPRM), and FCC 08-22 (Joint Board Comprehensive Reform NPRM).

[2] 47 C.F.R. § 54.307(a).

Cellular") opposes the Commission's tentative decision to eliminate the identical support rule. It contends that the elimination of this rule "would impair the ability of wireless competitive ETCs to compete against incumbent LECs" and that "unequal federal funding", a result of abolishing the identical support rule, would violate the "competitive neutrality" principle.[3] The ICC does not agree with US Cellular's assertions.

First, the US Cellular's assertion that abolishing the identical support rule would impair wireless carriers' ability to compete is unsupported. The amount of high cost support awarded to an incumbent LEC in a high cost area is based on the incumbent LEC's cost of provisioning supported services in the area. Under the identical support rule, neither wireless ETCs nor competitive wireline ETCs are required to submit cost data in order to receive high cost universal services subsidies. Instead, these carriers receive the same dollar amount of per line subsidies as the incumbent LECs in the same areas. Therefore, the dollar amount of subsidies received by wireless ETCs (and competitive wireline ETCs) under the identical support rule has no bearing on these carriers' own costs of provisioning supported services. Because high cost universal service subsidies provided to wireless ETCs and competitive wireline ETCs are not linked to these carriers' own costs of provisioning supported services, there is no reason to conclude, as US Cellular appears to, that wireless carriers will not be able to compete with incumbent LECs if they do not receive a level of support identical to that provided the incumbent. The fact that wireless carriers have been willing to enter high cost areas when receiving identical support (or even no support) suggests that wireless carriers costs may well be less than those of the incumbent LECs in certain areas. In such areas, wireless carriers do not necessarily need subsidies at incumbent LEC levels in order to compete with the incumbent. Absent cost

[3] US Cellular Initial Comments, at 7 and 10.

information, U.S. Cellular's contentions remain just that — contentions unsupported by pertinent facts.

Furthermore, US Cellular's argument implies that wireless and wireline services are competing solely on the basis of price. However, these services are not identical, with the most obvious difference being the mobility inherent in cellular service. There is no evidence that consumers view the wireless and wireline service as close substitutes and therefore that wireless providers compete only on the basis of price. Indeed, as the FCC found in its recent ETC Support Cap Order: "[R]ather than providing a complete substitute for traditional wireline service, … wireless competitive ETCs largely provide mobile wireless telephony service **in addition to a customer's existing wireline service**[,]"[4] and that as a result "[m]any households subscribe to both [wireline and wireless] services and receive [high cost] support for multiple lines, which has led to a rapid increase in the size of the fund [.]"[5]

The ICC does not disagree that if wireless subsidies are reduced wireless carriers will, all else equal, be less inclined to provide service. This is a statement true of any service. Such qualitative statements do not add value to the task faced by the Commission, which is to evaluate whether the benefits of continuing an equal support rule outweigh the costs.

Second, US Cellular also argues that "[t]he problem with the Commission's proposal to abandon the identical support rule, and instead to base high-cost support on competitive ETCs'

[4] In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Alltel Communications, Inc., *et al*: Petitions for Designation as Eligible Telecommunications Carriers; RCC Minnesota, Inc. and RCC Atlantic, Inc.: New Hampshire ETC Designation Amendment, FCC Release No. 08-122, WC Docket No. 05-337, CC Docket No. 96-45 (April 29, 2008: Adopted; May 1, 2008: Released), 2008 FCC LEXIS 3628, *Order*, ¶ 20, (emphasis added).

[5] *Id.,* at ¶¶ 20, 21.

own embedded cost, is that this 'unequal federal funding' would not be competitively neutral."[6] As an initial matter, in making this argument US Cellular overlooks asymmetries in the mechanism used to implement the identical support rule. The identical support rule imposes asymmetric requirements on competitive ETCs and incumbent LECs by requiring only incumbent LECs, not other carriers, to bear the burden of submitting cost data. These asymmetric burdens, which US Cellular makes no reference to, are inconsistent with the notion that all providers are competing on an equal basis.

Apart from asymmetric regulatory burdens, however, the primary problem with US Cellular's argument is that it focuses narrowly on one flavor of competitive neutrality. In particular, it assumes that the only way to allow all providers the opportunity to compete for customers is to offer a fixed per line subsidy that is equal for any line provided in an area. However, this is not the only way, nor necessarily the best way, to allow competitors with different technologies an equal ability to provide service in a particular area.

As noted above, there is no evidence to suggest, and it is very improbable, that competitive ETC costs are equal to those of the incumbent LEC in all areas. In addition, the services that competitive ETCs provide often differ in terms of functionality (e.g., mobility) from that offered by incumbent LECs. Thus, when all providers are subsidized at the incumbent LEC subsidy rate, CETCs will sometimes receive more funding than they need in order to be able to provide service in an area. While such a regime can certainly be characterized as competitively neutral in that it allows carriers with differing technologies to compete against one another, it might well be a costly way to achieve such competition, and is not the only way.

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[6] US Cellular Initial Comments, at 7.

US Cellular need look no further than the NPRMs in this instant docket to see that there are alternatives to the identical support rule that allow providers to compete on a neutral basis to service high cost areas. Auctioning the right to provide subsidized service in an area could allow all providers, regardless of the type of technology used, to compete to provide service in high cost areas. Such methods might well result in provision of service at lower subsidy levels than are currently provided under a system whereby each carrier receives subsidies based upon the costs of a single provider using a single type of technology. Under such a regime, the most efficient provider would be rewarded, which is clearly a desirable outcome.

Alternatively, subsidies could be awarded on the basis of carriers' own costs, provided the carriers cost was below that of the incumbent LEC. This methodology would provide subsidies just sufficient to cover the difference between the carrier's cost and customers' affordable rate, but no more. This would allow carriers to compete for customers on bases other than costs and would elicit service with lower subsidies than are provided under the identical support rule.

US Cellular's argument misses the essential point that competitive neutrality is a means to an end, not an end in itself. The main purpose of creating a system where competitors are allowed to compete on an equal basis is to elicit provision of supported services at the least cost to the universal service program and, by extension, at the least cost to the telecommunications customers that fund this program. US Cellular's position would maintain an overly high level of subsidies for providers who use different technologies to provide less costly service. Instead of fostering competitive neutrality as a universal service principle, this position would provide a windfall to competitors who have a cost of service lower than the incumbent LEC.

Moreover, if the presence of a competitive ETC in a high cost area is solely due to the appeal of high cost universal service subsidy — that is, the carrier would not have had incentive to enter if not for the high cost subsidy — then the system is encouraging the subsidization of multiple unprofitable networks in these areas. As recent high cost universal service fund growth shows, this approach is an extraordinarily costly way to ensure consumers in high cost areas have affordable service.

The rationale behind high cost universal service support is that without market intervention in the form of subsidies a significant number of consumers would not have access to essential telecommunications services at affordable rates in some areas. That is, it would not be economically viable for any carrier to provide the supported services at affordable rates in these areas, as the affordable rates would be below the unit costs of provisioning the services. The high cost universal service support program is not a costless social program. It is funded by the end users of telecommunications services. These end users bear the burden of subsidizing carriers for providing services in high cost areas. The greater the amount of high cost universal service subsidization, the greater the burden to end users of telecommunications services. In the ICC's view, the social objective of achieving universal availability of telecommunications services at affordable rates should not impose *undue* burden on end users of telecommunications services. High cost universal service subsidies should be the minimum subsidies achievable to ensure the availability of telecommunications services at affordable rates. That is, end users of telecommunications services should not bear a greater burden than *absolutely necessary* for achieving the social objective of universal service. Illinois, as a state whose net contribution to the fund is exceeded by few other states, has a strong interest and major stake in ensuring that subsidies do not exceed levels consistent with the aforementioned premise. The rapid expansion of the high cost universal service fund since the inception of the equal support rule has proven that the equal support rule is an overly burdensome mechanism and it is not competitively neutral, as asserted by US Cellular.

(B) Elimination of identical support rule should not be limited to wireless carriers and broadband providers.

In its initial comments, United States Telecommunications Association ("USTA") argues that the Commission should continue its identical support rule for competitive wireline carriers. The ICC does not agree. The ICC believes that all arguments adduced in Section II.(A) above in response to U.S Cellular's contentions apply equally to USTA's advocacy of retention of the identical support rule for wireline CETCs. As noted above, the identical support rule imposes undue burdens on the end users of telecommunications services. This is equally true for both wireline CETCs and wireless CETCs.

III. SINGLE WINNER REVERSE AUCTION

(A) A Single Winner Reverse Auction Is Appropriate for Awarding Wireless Construction Grants

In its initial comments, Verizon Wireless advocates awarding wireless construction grants in unserved, and only in unserved, areas.[7] The ICC agrees that, if the Commission decides to create a specific construction fund for wireless carriers, this should provide funding to a single carrier rather than multiple carriers in an unserved area. In unserved areas, high infrastructure investment costs associated with building a wireless network result in market forces alone not providing sufficient incentives for any wireless carriers to enter. Wireless construction grants would help to provide incentives for a wireless carrier to enter and provide wireless service. If

[7] *See* Verizon Wireless Initial Comments, at 8-17.

the Commission determines that it is essential to have affordable wireless services available in order to meet universal services goals — and the ICC offers no opinion on this — promoting entry by multiple entities is not in the public interest. As discussed in Section II, the Commission should not encourage the subsidization of multiple unprofitable networks in these areas. A system with a single provider receiving support has other benefits apart from potential costs savings to the high cost fund. For example, the winner could be required to comply with carrier of last resort obligations, obligations that become much more difficult to impose in a multiple subsidized provider environment.

Verizon differentiates between support provided to build networks in unserved areas and support for on-going operations necessary for the provision of service. If the Commission adopts a wireless construction grant program as advocated by Verizon, it is important that the Commission consider wireless construction grants in conjunction with the need for on-going support. In unserved areas, where construction grants are necessary, it is likely that carriers will require on-going support during and after the network funded by the grants is built. The level of need for on-going support is likely to change over time. A carrier receiving wireless construction grants may need a higher level of on-going support for operation and maintenance of its network after it begins providing service, but before construction is complete and demand for service in the area has matured. After construction is complete and demand is mature the level of need for on-going support should be greatly diminished. The carrier’s need for on-going support should be taken into account when awarding a carrier a wireless construction grant. At the onset of the construction project it should be established that on-going support will be reduced, perhaps incrementally, over time. Support levels for the period during and after the construction period should be clearly identified when the grant is awarded.

(B) Reverse Auction May Not Be Effective in Determining the Level of Need for Support for Wireless Carriers Currently Provisioning Services

Verizon Wireless also recommends, in its initial comments, a single winner reverse auction for awarding on-going support for existing wireless networks.[8] The ICC agrees with Verizon's statement that "the Commission should ensure that high cost subsidies are limited to geographic areas where consumers would be denied service without universal service support and also ensure that subsidies in areas that do need support are limited to no more than is required."[9] However, a reverse auction may not be an effective tool in achieving the stated goals.

A reverse auction can be used to select the most efficient wireless carrier among several existing wireless carriers. As noted by the Commission, a reverse auction process might produce a winning bid close to the minimum level of subsidy required to meet universal service obligations assuming that a sufficient number of reasonably efficient providers participate in the auction.[10] However, with respect to on-going support for existing wireless networks, the number of participants in the auction is constrained by the number of wireless carriers that are currently operating in the area (assuming carriers when bidding in an "only the winner survives" auction essentially view past construction costs as sunk costs). This creates a paradoxical result. In order for the auction to successfully produce minimum subsidies, multiple providers must be established in the area. However, if there are multiple providers already established in the area,

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[8] *See* Verizon Wireless Initial Comments, at 18-22.

[9] Verizon Wireless Initial Comment, at 18.

[10] High Cost Universal Service Support; Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, FCC 08-5, WC Docket No. 05-337, CC Docket No. 96-45 (rel. January 29, 2008) ('Reverse Auction NPRM"), ¶ 11.

then it is questionable whether subsidies are required at all. Thus a reverse auction is an ineffective tool to identify on-going support needs.

Apart from the potential to inflate subsidies above necessary levels, a reverse auction that determines the level of on-going service support has the strong potential to distort competition in areas where wireless competition exists. A single winner auction in an otherwise competitive market would simply put the efficient winning carrier in an advantageous position relative to its wireless peers. The net effect could well be that an otherwise competitive market with multiple providers could be transformed into a single wireless provider market.

In summary, while a reverse auction might be effective in selecting the most efficient carrier in a market, it may not be effective in identifying areas where high cost support is unnecessary for the operation and maintenance of the existing networks. Similarly, it may not be effective in producing a winning bid that is close to the minimum subsidy necessary for the most efficient wireless carrier to provide supported services in the area.

Respectfully submitted,

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